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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-379

DAN SULLIVAN, an infant, by his next friend,
DANIEL SULLIVAN, *et al.*,

Petitioners,

—against—

HOUSTON INDEPENDENT SCHOOL DISTRICT, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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IN THE

Supreme Court of the United States

October Term, 1973

No.

DAN SULLIVAN, an infant, by his next friend,
DANIEL SULLIVAN, *et al.*,

Petitioners,

-v-

HOUSTON INDEPENDENT SCHOOL DISTRICT, *et al.*,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on March 15, 1973.

Opinions Below

The memorandum opinion dated November 17, 1969 in support of the district court's original permanent injunction decree and declaratory judgment is reported at 307 F.Supp. 1328 and is set out in the Appendix, *infra*, 1a to 39a. The district court's memorandum opinion and order dated June 23, 1971, which contains in full the original permanent injunction decree and declaratory judgment, is reported at 333 F.Supp. 1149 and is set out in the Appendix, *infra*, 40a to 104a. The district court's Supplementary Permanent Injunctive Decree of October 7, 1971 is not reported and is set forth in the

Appendix, *infra*, 105a to 109a. The opinion of the Court of Appeals is reported at 475 F.2d 1071 and is set out in the Appendix, *infra*, 110a to 126a.

Jurisdiction

The judgment of the United States Court of Appeals for the Fifth Circuit was entered on March 15, 1973. A petition for rehearing and suggestion of en banc rehearing was denied on April 30, 1973. On July 23, 1973, Mr. Justice Powell issued an order extending the time within which to file this petition for writ of certiorari up to and including August 29, 1973. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

Questions Presented

1. Whether the application of a "clean hands" doctrine as a bar to an action challenging unconstitutional school rules abridges the First Amendment rights of students.

2. Whether a school district violates the First Amendment rights of students when it requires the submission of all written material to school officials prior to its distribution on or near school premises.

3. Whether school officials violate the First Amendment rights of students when:

a. they prohibit all sales of publications by students on or near school premises.

b. they prohibit distribution of a publication because it contains language advocating illegal activities or disobedience to school regulations, without regard to any showing of "material and substantial disruption" of school activities.

c. they prohibit distribution on campus of any literature advocating the nomination or election of any person to public office.

d. they suppress a student publication because it contains "obscene language" when the publication is not obscene for minors.

e. they require that contributors, editors and publishers of student publications be identified on the publication.

Statement of the Case

This is a civil rights action, brought pursuant to 42 U.S.C. § 1983, involving a broad range of First Amendment issues related to the distribution of student publications on or near school property. There were two stages to the proceedings in the district court, with an appeal taken only from the second.

The action was commenced in March 1969 by two Houston high school students, Dan Sullivan and Mike Fischer, who had been summarily expelled for distributing *Pflashlyte*, a newspaper that they published and that criticized school policies. The action was brought as a class action on behalf of all students in the last three high school grades of the Houston School District. In November 1969, the district court, in a lengthy opinion broadly reaffirming the students' First Amendment rights, held that the suit was properly a class action, ordered that Sullivan and Fischer be reinstated, enjoined enforcement of the regulation under which they were suspended, and set out guidelines for the permissible regulation of distribution of literature. App., *infra*, 1a-39a.

An appeal from that judgment was dismissed on the school district's own motion.

In February 1970 the school district issued new rules regarding distribution of literature on school premises and off school premises if "distribution is calculated to and in fact does result in possession by students on school premises." App., *infra*, 95a, n. 3. The rules included: 1) a requirement that all written material be submitted to the principal for approval before distribution; 2) a requirement that each publication bear the names of its publishers, editors and publishers; 3) a prohibition against publications which contain "libelous or obscene language"; 4) a prohibition against publications which advocate "illegal action or disobedience to published rules on student conduct"; 5) a prohibition against all sales of publica-

tions, and 6) a prohibition against all literature "advocating the nomination or election of any person for public office."

On October 20, 1970, Paul Kitchen was standing near an entrance to, but not on, the school premises, selling a newspaper called SPACE CITY! to students on their way to school, when he was confronted by the school principal, Gorden Cotton, and told to stop selling the paper because he was violating school board policy.

Kitchen continued selling the newspaper, and was shortly thereafter summoned to the principal's office and summarily suspended "for his failure to comply with both the prior submission rule and Mr. Cotton's request that he stop selling the papers." App., *infra,* 115a. The suspension was to last until October 26, the time of a scheduled conference between the principal and Kitchen's parents. In anger, Kitchen shouted, "goddamn" and slammed the door to the principal's office. App., *infra,* 48a.

On the morning of October 26, Kitchen again attempted to sell SPACE CITY! near the school and was again confronted by the principal, who threatened to have Kitchen arrested if he continued to sell the papers. In the course of this confrontation Kitchen "employed the common Anglo-Saxon vulgarism for sexual intercourse." App., *infra,* 116a.

Paul was arrested, taken to the police station, and later released. A suspension letter was sent out that day informing the parents that Paul was suspended for the remainder of the semester for violating the school policy "regarding school publications" and "using profanity in the presence" of two women assistants (an apparent reference to the October 20 incident). App., *infra,* 96a, n. 5.

After a hearing on October 29 before the principal, who upheld his suspension of Kitchen, and an appeal and hearing before the assistant superintendent for the School District, who also upheld the suspension, Kitchen filed a proceeding for contempt and supplementary injunctive relief in the district court. The district court ordered Kitchen reinstated and, on

October 7, 1971, entered a supplementary injunctive decree enjoining enforcement of the school board's February 1970 regulations concerning prior submission, sale of publications, censorship of obscene language, advocacy of illegal activities or disobedience to school rules, and any other regulation proscribing "the distribution of written material on the basis of its content" that is not obscene and does not result in "substantial and material interference with 'normal classroom activity' or 'normal school function'...." App., *infra*, 105a-109a. The request for a contempt citation was denied. App., *infra*, 92a.

Both parties appealed from this order. The Fifth Circuit left the original injunction in force, but vacated the supplementary injunctive decree on the grounds that, by failing to obey the school district rules and the school principal's order and in using profanity, Paul Kitchen did not come into court with clean hands, and could not seek injunctive relief. App., *infra*, 119a, 122a.

By vacating the supplementary decree, which had invalidated the school district's February 1970 regulations, the Court of Appeals left school officials free to enforce those regulations against the class of students in whose behalf the action had been prosecuted.

REASONS FOR GRANTING THE WRIT

1. The Fifth Circuit's Holding That Persons Seeking Vindication of Their First Amendment Rights Must Come Into Court With Clean Hands Is Without Precedent in This Court and Defies Well Settled Constitutional Principles.

In *Tinker v. Des Moines Independent Community School District*, 393 U.S. 503 (1969), this Court developed a constitutional test under which students' First Amendment rights enjoyed full constitutional protection so long as their exercise did not "materially and substantially disrupt" school activities. 393 U.S. at 513.

Although there is no evidence in the record that Paul Kitchen disrupted, materially or otherwise, any school activities

in distributing his underground newspaper, the Fifth Circuit refused to consider his constitutional claim because he failed to "come into court with clean hands." App., *infra*, 122a. This unique condition to enjoyment of First Amendment rights is without foundation in *Tinker* – or, for that matter, in any other decision of this Court.

The court below, in holding that courts may legitimately refuse "to accord constitutional protection to the actions of students who blatantly and deliberately flout school regulations and defy school authorities," App., *infra*, 120a, seemed to be articulating the following "clean hands" principle: Students that disobey school rules may not later come into court and challenge the constitutionality of those rules or any other rules.

Although it apparently makes no difference to the court whether or not the rule or order that is disobeyed is constitutional, it is helpful to discuss separately (1) disobedience which is of an unconstitutional rule or order and (2) disobedience which may be of a constitutional rule or order.

(1) The court below rejected Kitchen's constitutional arguments because of his "flagrant disregard of established school regulations [and] his open and repeated defiance of the principal's request." App., *infra*, 120a. As the district court held, the regulations that Kitchen allegedly violated in distributing his newspaper were not only unconstitutional,[1] but also illegal in that they violated the district court's injunction. App., *infra*, 50a. The principal's request, based on those regulations, was similarly unconstitutional and illegal. Kitchen should have been free to disregard both.

It is as much a perversion of equitable principles as it is of constitutional principles to suggest that it is the person who peacefully exercises First Amendment rights, rather than the school official who seeks to abridge those rights, who lacks "clean hands".

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1. See discussion in sections 2 and 3, *infra*.

This Court has consistently held that a citizen "cannot be punished for failing to obey the command of an officer if that command is itself violative of the Constitution." *Wright v. Georgia*, 373 U.S. 284, 291-92 (1963). Whether that command be given by an officer from the school or the police force, one does not, as Chief Justice Stone observed, forfeit his right "to attack its constitutionality, because he has not yielded to its demands." *Jones v. Opelika*, 316 U.S. 584, 602 (1942) (dissenting opinion), quoted in *Shuttlesworth v. Birmingham*, 394 U.S. 147, 151 (1969). See also, *Freedman v. Maryland*, 380 U.S. 51 (1965); *Staub v. Baxley*, 355 U.S. 313 (1958); *Lovell v. Griffin*, 303 U.S. 444 (1938).

In *Tinker*, this Court passed upon a school district's policy prohibiting students from wearing black armbands in protest against the war in Vietnam. Without devoting a single word of discussion to the fact that the plaintiffs, in wearing their armbands and suffering suspension, had "blatantly and deliberately" flouted the school district policy, the Court proceeded to an analysis of the policy and concluded that it abridged the students' First Amendment rights.

Not only *Tinker*, but each of the federal court decisions upon which it relied, accept the proposition that the constitutionality of school rules may be challenged in defense to suspensions and expulsions imposed for violating them. See *Burnside v. Byars*, 363 F.2d 744 (5th Cir. 1966); *Hammond v. South Carolina State College*, 272 F.Supp. 947 (D.S.C. 1967); *Dickey v. Alabama State Board of Education*, 273 F.Supp. 613 (M.D. Ala. 1967). Subsequent federal cases have upheld the constitutional claims of students who disobeyed school rules. *Richards v. Thurston*, 424 F.2d 1281 (1st Cir. 1970); *Stull v. School Board of Western Beaver Jr.-Sr. High School*, 459 F.2d 339 (3rd Cir. 1972); *Massie v. Henry*, 455 F.2d 779 (4th Cir. 1972); *Breen v. Kahl*, 419 F.2d 1034 (7th Cir. 1969); *Crews v. Cloncs*, 432 F.2d 1259 (7th Cir. 1970); *Bishop v. Colaw*, 450 F.2d 1069 (8th Cir. 1971) (all cases involving school regulation of hair length); *Fujishima v. Board of Education*, 460 F.2d 1355 (7th Cir. 1972) (prior submission rule).

Even where courts have rejected those claims, they have not suggested that the student's disobedience barred consideration of the constitutional issue. *Jackson v. Dorrier*, 424 F.2d 213 (6th Cir. 1970); *King v. Saddleback Junior College District*, 445 F.2d 932 (9th Cir. 1971); *Freeman v. Flake*, 448 F.2d 258 (10th Cir. 1971) (all long hair cases); *Guzick v. Drebus*, 431 F.2d 594 (6th Cir. 1970) (wearing political buttons prohibited); *Sword v. Fox*, 446 F.2d 1091 (4th Cir. 1971) (prohibition of demonstrations within school buildings upheld).[2]

The same approach is evident in cases concerning the First Amendment rights of teachers. See, e.g., *James v. Board of Education*, 461 F.2d 566 (2d Cir. 1972) (teacher's right to wear armband upheld); *Russo v. Central School District No. 1*, 469 F.2d 623 (2d Cir. 1972) (teacher's right to stand silently during pledge of allegiance); *Keefe v. Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Parducci v. Rutland*, 316 F.Supp. 352 (M.D. Ala. 1970) (both invalidating teacher's dismissal for assigning material containing "offensive" words).

The court below cites only two decisions in which federal courts have held that students were barred from challenging the constitutionality of school rules or policies because of their failure to comply with them.[3] The first of these, *Schwartz v.*

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2. Interestingly, the Fifth Circuit has itself reached the constitutional issues in several cases where students violated the rule at issue. *Stevenson v. Board of Education*, 426 F.2d 1154 (1970); *Ferrell v. Dallas Indep. School Dist.*, 392 F.2d 697 (1968); *Griffin v. Tatum*, 425 F.2d 201 (1970); *Burnside v. Byars, supra; Blackwell v. Issaquena County Board of Education*, 363 F.2d 749 (1966).

3. The other cases cited by the Fifth Circuit are not pertinent. Neither *Duke v. North Texas State University*, 469 F.2d 829 (5th Cir. 1973) nor *Esteban v. Central Missouri State College*, 415 F.2d 1077 (8th Cir. 1969) upheld suspensions simply because students had violated school rules; rather, both courts found that the students had engaged in conduct that was not protected by the First Amendment. Although there is dictum in *Quarterman v. Byrd*, 453 F.2d 54, 60 n. 11 (4th Cir. 1971) suggesting sympathy for some "clean hands" rule in school cases, the plaintiff's suspension, imposed for violating the school's distribution rule, was

Schuker, 298 F.Supp. 238 (E.D.N.Y. 1969), cited no other case that reached the same result.[4] The second, *Graham v. Houston Independent School District*, 335 F.Supp. 1164 (S.D. Tex. 1970), cited only *Schwartz*.

In short, with the exception of *Schwartz* and *Graham*, there is no authority at all for the conclusion reached below that a student who violates a school rule is barred from subsequently challenging its constitutional validity.

(2) The Fifth Circuit's second reason for declining to consider Paul Kitchen's challenge to the school district's rules was "his resort to profane epithet. . ." App., *infra*, 120a. It is important to note, however, that the Fifth Circuit was not merely saying that the use of profanity on school premises does not enjoy constitutional protection. Such a holding, although raising troublesome First Amendment questions, would at least have an arguable legal foundation.[5] But the Fifth Circuit held, in addition, that students who use profanity are barred from challenging school rules that unconstitutionally abridge their right to distribute literature. Although the court called this an application of the "clean hands" doctrine, it cited no other case that had ever reached the same result.

The limits of the rule seemingly articulated by the Fifth Circuit—that certain persons, by reason of prior bad conduct, forfeit their constitutional rights—are not spelled out. Does the rule apply to all persons, or only to students, and to all

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expunged and the rule declared unconstitutional. *Healy v. James*, 408 U.S. 169 (1972) states that official recognition of a college organization may be denied if the organization will not agree to abide by "reasonable campus regulations." There is nothing in the opinion to suggest that unconstitutional regulations would be considered reasonable and that obedience to them would be compelled.

4. The court did cite *Jones v. State Board of Education*, 407 F.2d 834 (6th Cir. 1969) but this issue was not even considered by the Sixth Circuit.

5. Compare *Gooding v. Wilson*, 405 U.S. 518 (1972) with *Chaplinsky v. New Hampshire*, 315 U.S. 568 (1942).

constitutional rights[6] or only to First Amendment rights? What kind of misconduct results in a forfeiture and how long does it last?

Broadly applied, the rule defies the settled constitutional principle that attacks on overly broad statutes will be permitted "with no requirement that the person making the attack demonstrate that his own conduct could not be regulated by a statute drawn with the requisite narrow specificity." *Dombrowski v. Pfister,* 380 U.S. 479, 486 (1965), quoted in *Gooding v. Wilson,* 405 U.S. 518, 521 (1972). As a rule narrowly applied only to alleged student misconduct, it ignores the factual setting in which *Healy v. James,* 408 U.S. 169 (1972) was litigated as well as last Term's decision in *Papish v. University of Missouri Board of Curators,* 41 U.S. Law Week 3496 (March 19, 1973). What the Court said there may be said as appropriately about Paul Kitchen here: "[D]isenchantment with Miss Papish's performance, understandable as it may have been, is not justification for denial of constitutional rights." *Id.* at 3496 n. 3.

The decision below presents an even more compelling case for reversal than *Papish* because it has been denominated a class action. By vacating the district court injunction, the Fifth Circuit has penalized the entire class for the alleged misconduct of one student. As a result, students in the Houston Independent School District remain subject to rules which will "tend to suppress constitutionally protected rights." *Coates v. Cincinnati,* 402 U.S. 611, 620 (1971) (opinion of White, J.).

The impediment to vindication of First Amendment rights imposed by the Court below is unprecedented. Certiorari should be granted to reaffirm this Court's promise to public school students that "free speech is not a right that is given only to be so circumscribed that it exists in principle but not in fact." *Tinker, supra,* 393 U.S. at 513.

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6. As Justice Frankfurter said, the Fourth Amendment protects even "dubious characters." *Harris v. United States,* 331 U.S. 145, 156 (1947) (dissenting opinion).

2. The Requirement That Students Submit All Written Material To The Principal In Advance Of Distribution Is An Unconstitutional Prior Restraint On Free Speech And Expression.

This Court has consistently looked upon systems of prior restraint with suspicion. *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Bantam Books v. Sullivan*, 372 U.S. 58 (1963). Although it has suggested that the prohibition against prior restraints is not absolute, the Court has never approved a prior restraint upon written material. *Cf. Freedman v. Maryland*, 380 U.S. 51 (1965). If one were to be approved, this Court has made it clear that it would only be under the narrowest of circumstances. *New York Times Co. v. United States, supra.*

No decision nor dictum of this Court has ever suggested that government could require of an *entire* group of persons that they submit for executive approval *all* writings before distribution would be permitted. No prior restraint will be tolerated which is "predicated upon surmise or conjecture that untoward consequences may result." *Id.* at 725-26 (Brennan, J., concurring). Rather, there must be "governmental allegation and proof that publication must inevitably, directly and immediately", *id.* at 726-27, cause an event of the most profound seriousness. Curiously, the school district here has not only failed to offer direct evidence of serious consequences, but has not even offered "surmise or conjecture" about such consequences.

In the absence of some evidence of specific, serious consequences justifying the prior submission rule, it quite clearly is inconsistent with fundamental First Amendment doctrine and with this Court's reaffirmation of students' First Amendment rights in *Tinker.* As this Court said, "[u]ndifferentiated fear or apprehension of disturbance is not enough to overcome the right to freedom of speech." 393 U.S. at 508.

Two circuits have invalidated rules requiring prior approval of student literature on the basis of *Tinker. Fujishima v. Board*

of Education, 460 F.2d 1355 (7th Cir. 1972); *Riseman v. School Committee*, 439 F.2d 148 (1st Cir. 1971).[7] Two circuits have reached the same result as the Court below. *Eisner v. Stamford Board of Education*, 440 F.2d 803 (2d Cir. 1971); *Quarterman v. Byrd*, 453 F.2d 54 (4th Cir. 1971).

This Court should grant *certiorari* on this issue in order to overrule the Fifth Circuit's departure from settled constitutional principles and to reconcile the conflict in the circuits.

3. The School District's Rules Regarding Sale And Content Of Literature Violate This Court's Holding in Tinker And The Decisions Of Other Circuits.

The school district's rules regarding sale and content of literature ignore the *Tinker* holding that First Amendment rights of students may not be abridged except upon evidence "which might reasonably" lead school officials "to forecast substantial disruption of or material interference with school activities. . . ." 393 U.S. at 514. However, the prohibitions regarding content and sales are blanket bans which the district has not attempted to support by any specific evidence justifying fear of disruption.

a) *Sales.* The school district regulations include a ban on all sales of publications on or near school property. App., *infra*, 95a, n. 3. There is no evidence offered by the school district that sales of literature are any more likely to cause disruption than free distribution. In fact, on the day Paul Kitchen was suspended, he was selling SPACE CITY! without incident until his confrontation with the principal.

This Court has held that the right to sell literature is an essential ingredient of First Amendment guarantees. *Murdock v. Pennsylvania*, 319 U.S. 105 (1943). The effect of school district rules prohibiting sale of literature will substantially curtail the First Amendment rights of students who cannot bear the full costs of publishing a newspaper. As *Murdock* said, "Freedom of

7. Neither the New York City or Philadelphia school systems have found it necessary to require prior approval of student literature. *Sullivan v. Houston Independent School District*, 333 F.Supp. 1149, 1161 n.14 (S.D. Tex. 1971).

speech, freedom of the press, and freedom of religion are available to all, not merely to those who can pay their own way." *Id.* at 111.

Interestingly, the Fifth Circuit's decision in *New Left Education Project v. University of Texas*, 472 F.2d 218 (5th Cir. 1973) indicates that, if it reached the merits of the prohibition on sales, it would hold the ban unconstitutional. Although no other circuit court has directly passed on this issue, the Seventh Circuit implicitly approved sale of literature in *Scoville v. Board of Education*, 425 F.2d 10 (7th Cir. 1970). One district court has explicitly reached that result. *Jacobs v. Board of Education*, 349 F.Supp. 605 (S.D. Ind. 1972).

b. *Advocacy of illegal activities.* The school district rules prohibit the distribution of any publication that "advocates illegal action or disobedience to published rules on student conduct. . . ." App., *infra*, 95a, n. 3. No evidence has been adduced by the school district that such a rule is necessary to prevent material disruption. Inasmuch as the rule prohibits all such advocacy, whether "as an abstract doctrine" or as a call to "concrete action", the rule violates this Court's holding in *Yates v. United States*, 354 U.S. 298, 320, 321 (1957).

A similar rule has been invalidated by the Seventh Circuit. *Scoville v. Board of Education*, 425 F.2d 10 (7th Cir. 1970). See also, *Baughman v. Freienmuth*, No. 72-1892, ___ F.2d ___ (4th Cir., May 17, 1973).

c. *Advocacy regarding candidates for public office.* The district's rule prohibiting distribution of any material "advocating the nomination or election of any person for public office," App., *infra*, 95a, n. 3, is an unconstitutional infringement of students' right to participate in the political process. As the Fifth Circuit itself has observed, this right is especially important now that the voting age has been lowered to 18. *Shanley v. Northeast Independent School District*, 462 F.2d 960, 978 (5th Cir. 1972). In the absence of specific evidence that literature related to political campaigns is substantially disruptive, the rule is inconsistent with *Tinker*.

Two federal courts have invalidated similar prohibitions. *Rowe v. Campbell Union High School District*, Civil Action No.

51060 (N.D. Cal. Sept. 4, 1970) (3-judge court); *Sanders v. Martin*, 72 C 1398 (E.D.N.Y. Nov. 21, 1972).

d. *Obscenity.* The school district's prohibition against "obscene language," App., *infra*, 95a, n. 3, is unconstitutionally overbroad. *Ginsberg v. New York*, 390 U.S. 629 (1968). It is evident from the principal's action on the day of Kitchen's distribution that school officials intend to enforce the rule against constitutionally protected literature that contains words of which they do not approve. This Court's observation that the censorship of such words inevitably results in censorship of ideas, *Cohen v. California*, 403 U.S. 15 (1971), is well illustrated by the principal's action here. His treatment of Kitchen led the district court to "reluctantly" conclude "that Mr. Cotton determined to prevent distribution of a particular issue of SPACE CITY! because he disapproved of its social philosophy, its political position, and its unorthodox style." (App., *infra*, 74a.)

Federal courts have uniformly overruled school officials seeking to prohibit or punish the use of disapproved words. *Keefe v. Geanakos*, 418 F.2d 359 (1st Cir. 1969); *Fujishima v. Board of Education*, *supra*; *Koppell v. Levine*, 347 F.Supp. 456 (E.D.N.Y. 1972); *Vought v. Van Buren Public School*, 306 F.Supp. 1388 (E.D. Mich. 1969).

e. *Anonymity.* The school district requires that any distributed publication "contain the names of the individual contributors, editors, and publishers." App., *infra*, 95a, n. 3. This Court, in upholding the right to distribute written material anonymously in *Talley v. California*, 362 U.S. 60 (1960), has recognized that the fear of reprisal created by an identification requirement can substantially inhibit free expression.[8] The school district has made no attempt to justify this significant limitation of the First Amendment rights of students on the basis of disruption of school activities.

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8. Although no federal court has passed on this issue, the three-judge court in *Rowe v. Campbell Union High School District*, *supra*, citing *Talley v. California*, observed: "Defendants admit that the . . . paragraph requiring identification of the publishers is unconstitutional."

Given the extraordinary hostility shown by school officials around the country to student criticism of school policies and other student expression on controversial subjects, and given the enormous power such officials have to affect the future lives of students, it can be fairly assumed that many students will refrain from exercising their First Amendment rights if they are required to identify themselves as authors of officially disfavored publications. The extra-curricular "personal intercommunication among students" which this Court hoped to foster in *Tinker, supra,* 393 U.S. at 512, will surely be inhibited.

CONCLUSION

For the reasons stated above certiorari should be granted.

Respectfully submitted,

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